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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,538	10/07/2003	Bradley Jon VanderTuin	27644.16	5013

32300 7590 10/20/2004

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EXAMINER	
SIPOS, JOHN	
ART UNIT	**PAPER NUMBER**
3721	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/680,538	VANDERTUIN ET AL.	
	Examiner	Art Unit	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

eriod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

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1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

isposition of Claims

4)☒ Claim(s) 1-52 is/are pending in the application.

4a) Of the above claim(s) 23-52 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-22 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

pplication Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

riority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

ttachment(s)

) ☒ Notice of References Cited (PTO-892)

) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 1/15/2004.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

RESTRICTION REQUIREMENT

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-22, drawn to an apparatus for applying heat to articles from below the conveyor, classified in Class 53, subclass 48.2.

Group II. Claims 23-30, drawn to an apparatus for applying heat to articles from the sides of the articles, classified in Class 53, subclass 557.

Group III, Claims 31-47, drawn to a heat tunnel with multiple air supply units, classified in Class 34, subclass 216.

Group IV, Claims 48-52, drawn to a modular air supply unit, classified in Class 34.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups I-IV are related as **subcombinations disclosed as useable together in a single combination**. The subcombinations are distinct from each other if they are shown to be separately useable. In the instant case, each of the invention of the above Groups has separate utility because it can be used without the s\other subcombinations. For example, the heating tunnels of Groups I, II and IV need not have multiple air supplies. (See MPEP 806.05(d)).

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

During a telephone conversation between Examiner John Sipos and Mr. N. R. Capes, attorney of record in this case, on October 12, 2004, a provisional election was made with traverse to prosecute the invention of Group I comprising claims. Affirmation of this election must be made by applicant in responding to this Office action. Claims 23-52 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by

> another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1,3,5,7 and 20-22 are rejected under **35 U.S.C. ' 102(b)** as being anticipated by the patent to Grenweell (3,545,165). The patent to Greenwell shows a packaging machine comprising a conveyor 702 having a plurality of apertures between rollers 704, the conveyor comprising two chains 705,706, a source of air with a fan 718, a heated air plenum below the conveyor 714 with apertures 719, a return air plenum 711, a shroud enclosing the conveyor 713 that is spaced at a displacement from the conveyor (see the spacing between walls 728,729 and the conveyor in Figure 25), side ducts 722,723 and air flow controls 719 and 720.

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2,4,6, and 10-14 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Greenwell (3,545,165).

The use tapered tunnels to increase air flow (claim 2), conveyor cooling fans (claim 4), supplemental heaters (claims 6) and adjustable shrouds to accommodate different size articles (claims 10-13) are well known and would have been obvious to one skilled in the art for their known advantages.

Regarding claim 14, the size of the apertures depends upon the desired air flow and would have been obvious to one skilled in the art to experiment to reach the optimum desired flow.

Claims 7-9,15,16,18 and 19 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Greenwell (3,545,165) as applied to the claims above, and further in view of the patent to Neagle (5,765,336). The patent to Greenwell lacks the double lanes of articles. The patent to Neagle shows a packaging machine that can be converted from a single lane to a double lane operation by using double conveyors 150a-150d and a double width wrapper that is separated by knife 212 and thereby increases the productivity of the machine. Various mechanisms are adjustable to conform to either operation and central tools can be inserted to accommodate the two lanes (see column 3, lines 28-39). The articles are passed through a heating tunnel where the wrapper is shrunk onto the articles. It would have been obvious to one skilled in the art to provide the device of Greenwell with a duplicate conveyor and central tools to accommodate two lanes of articles as shown by Neagle to increase the machine output.

ADDITIONAL REFERENCES CITED

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882.** The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

John Sipos
Primary Examiner
Art Unit 3721

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